

REMARKS

On the late Proceedings of the Nicholson Commissioners,

**AND ON THE NICHOLSON LIEN IN RELATION TO THE
LANDS FORMERLY OF THE**

PENNSYLVANIA POPULATION COMPANY.

In the month of September last, the inhabitants of the North Western counties of this State were suddenly thrown into the utmost consternation by an advertisement which appeared in some of the public papers, stating that, by virtue of a decree of the Nicholson Court, upwards of fifteen hundred tracts of land, (the home, and in most cases the all, of at least forty thousand persons,) were, on the 24th day of October following to be sold at Pittsburgh as the property of John Nicholson. What tended to render this event the more startling was, that not only this decree was obtained without any trial, or any the slightest previous notice to the persons interested; but that no one here had ever had the slightest intimation, that any of our property was subject to the State lien against John Nicholson. On the contrary, some of our Representatives and others had been told by members of the Nicholson Court, that none of the lands in this section of Pennsylvania were affected by that lien.

Among the lands thus advertised by the Commissioners, there were between eleven and twelve hundred tracts once the property of the Pennsylvania Population Company, and now the property of numerous individuals, who hold them subdivided into small portions. As the connexion of the Subscriber with those lands during a period of 40 years, has enabled him to become thoroughly acquainted with the whole history of them, he deems it a duty he owes to the thousands who, in this section of the State, are interested in them, to make a short statement of facts, resting on the evidence of original documents now in his possession, from which it will appear, that the claim set up by the Nicholson Commissioners is entirely groundless; and that the lands in question were not, even for one hour, the individual property of John Nicholson.

It would have been easier to meet the claim set up by the Nicholson Commissioners, if those gentlemen had stated with precision the ground of that claim. But this they have not deemed proper to do. In the advertisement of sale, these lands are advertised as being the absolute property of John Nicholson, who is said to have paid for them at the Land Office; but in a subsequent publication by the Commissioners, under date of the 26th Sept. 1842, it appears to be admitted, that, after taking out the warrants for these lands, and paying for them, he made them the subject of a Joint-stock Association, and that he parted with his interest in it; but that part of the stock held by him, and specially 860 shares, were not transferred by him until the 5th May, 1796, and therefore after the date of the State lien. Now a simple statement of facts, will shew the utter fallacy of all the grounds on which the Commissioners rest their pretensions.

This section of Pennsylvania was opened for sale and settlement by the law of the 3d April, 1792. Under that law, John Nicholson, contemplating the formation of the Pennsylvania Population Company, made application at the Land office, on the 13th April, 1792, for 390 warrants, to be located in the Triangle, then known by the denomination of the Lake Erie Territory; and on the 14th April, 1792, he applied for 250 warrants, to be located on the waters of Beaver. Having thus secured the pre-emption right to these two bodies of land, containing about 256,000 acres, he set about forming his Association, according to a plan he had previously projected. The original plan of Association is now in the hands of James Gibson, Esq. of Philadelphia, with the names of the original stockholders appended to it. Of these articles of Association, I have a certified copy.

According to these articles of Association, the stock of the company was intended to consist of 2500 shares, to represent 500,000 acres of land, (and thus every share was to represent 200 acres;) but the company was to be organized, when 1000 shares, equal to 200,000 acres should be subscribed for. Every share was to be equal to half the price of a warrant for 400 acres; and it was provided, that whoever should transfer to the Association a donation tract of 200 acres, should, in return, be entitled to one share of stock. The title to the lands of the Company was to be vested in Trustees. The lands were to be held in common;—were to be disposed of by the President and Managers for common account;—and the proceeds to be divided, pro rata, among the stockholders.

Such are the leading outlines of these articles of Association. by the 22d Sect. of those articles, John Nicholson transfers to the Company any right he had acquired to the lands then applied for,

by virtue of his applications, the Company paying for these lands at the Land office. It appears thus, that John Nicholson transferred to the Company his pre-emption right, (and he had nothing more,) before a single dollar had been paid to the Land office, or a single warrant taken out.

I cannot say on what precise day the first stock in the Association was subscribed for; but I hold a certificate, given by Mr. Nicholson to Theophilus Cazenove, dated 2d May, 1792, certifying, that Mr. Cazenove had subscribed for 800 shares of stock; and it appears from the original minute book of the Pennsylvania Population Company, now in my possession, that on the 11th May, 1792, an election was held by the stock-holders, when 1430 votes were polled, at which election, John Nicholson was elected President, and Theo. Cazenove, Gen. Wm. Irvine, George Meade, Danl. Leet, John Hoge and Gen. Walter Stewart were elected Managers. It appears thus that the Company was fully organized before a single warrant was taken out. From this period, up to the dissolution of the Company in 1812, all the business in relation to these lands was conducted by the President and Managers of the Company, as will appear by a reference to two minute books now in my possession, in which a record was made of the various transactions of the Board:

At the meeting of the stockholders, on the 11th May, 1792, it was resolved, to increase the amount of land beyond the quantity of land already applied for; and at a meeting of the Board of Managers, held on the 18th May, 1792, it was resolved, that the new application to be made should be for 200,000 acres of land, (equal to 500 warrants,) of which 100,000 acres were to be located from near Le Boeuf lake westwardly, and the other 100,000 acres, south and westwardly of the first. *In consequence of this resolution*, 500 warrants were applied for on the 30th May, 1792, and subsequently taken out and located, partly in the south western part of Erie County, and partly in the western part of Crawford County. It appears thus, that these 500 warrants were not applied for until after the organization of the Company, and in consequence of a resolution of the stock-holders; and that John Nicholson had no agency in this application, except as the President of the Company. 400 of these warrants were not taken out till 1794. So much for the assertion, that John Nicholson applied for, and took out, those warrants, previous to the formation of the Company. Let us now see how it stands as to the Commissioners' assertion, that John Nicholson paid for all these lands.

The first payment made on behalf of these lands, was made on the 6th June, 1792, when the 390 warrants, applied for on the 13th April, 1792, and intended to be located in the Triangle,

were paid for at the Land office. But these warrants were paid for, not by Mr. Nicholson, but by Theo. Cazenove, on account of the 800 shares of stock subscribed for by him. I have Mr. Nicholson's request to Mr. Cazenove to pay for these warrants at the Land office, dated the 26th May, 1792, and I have a subsequent statement, also in Mr. Nicholson's hand writing, acknowledging that Mr. Cazenove did pay for these 390 warrants. As the account books of the Company are all in Philadelphia, I cannot say with precision when and how the remaining warrants were taken out and paid for. From the minute books in my possession it appears, that from time to time assessments were laid on the stockholders for the purpose of taking out warrants, in parcels as they were needed; and I hold a Land office receipt, shewing, that of the warrants applied for by the Company on 30th May, 1792, 400 were paid for on behalf of the Company on the 14th June, 1794.

Having thus shewn, that the assertion of the Commissioners, that these lands were paid for by John Nicholson in his private capacity, is totally groundless, I shall next examine their assertion, that he transferred 860 shares of stock in this Company on the 5th May, 1796, and therefore subsequent to the date of the State lien; and that he transferred other shares in 1797 and 1798. As the Commissioners give no specification as to the shares said to have been transferred in 1797 and 1798, I can say nothing in regard to them, except, that there is no evidence of any such transfers on the transfer Journal in my possession; and that, according to the articles of association, no transfer was valid which was not made in the presence of the Treasurer of the Company. In regard to the 860 shares, the Commissioners are altogether incorrect as to the date of transfer. These 860 shares were transferred by John Nicholson to James Cramond in three several parcels, as appears from leaves of an original transfer Journal now in my possession, viz:

670 shares transferred 3d January, 1795,

100 do. transferred 16th Feb. 1795,

90 do. transferred 7th March, 1795,

860 shares.

It appears then, that these 860 shares were all transferred previous to the date of the first lien in December, 1795. Whether the Commissioners have met with some document by which they have been misled as to the true date of the transfer of these 860 shares, I cannot say. To prevent all doubt or cavil as to the true state of Nicholson's stock account, I shall here give a statement of all the stock ever held by John Nicholson, taken from original documents.

According to a list of the original stockholders, in Mr. Nichol-

son's hand-writing, and now in my possession, it appears: that of the 2500 shares composing the stock of the Company, John Nicholson subscribed

535 sh's.

viz: to be paid for in money, 347 shares,

to be paid for in Donation land, 188 "

There were transferred to John Nicholson,

1793, Aug. 9th, by Geo. Mead, (6 to be p'd. in Donat'n. l'd.) 50 "

1794, June 28th. T. Ketland, Jr. (3 to be p'd. in do. do.) 80 "

" July 1st, John Ketland, - - - - - 21 "

On the 1st July, 1794, Nicholson had therefore, 686 sh's.

Of which 197 were to be paid for in Donation land.

1795, Jan. 3d, J. Nicholson transferred to Jas. Cramond, 670 "

Left him, 16 "

On the 24th Jan. 1795, Robert Morris transferred to J.

Nicholson, (of which 3 to be paid in Donation land,) 100 "

116 "

On the 16th Feb. 1795, J. Nicholson transf'd. to J. Cramond, 100 "

Left, 16 "

On the 6th March, 1795, Aaron Burr transferred to J.

Nicholson, - - - - - 90 "

106 "

On the 7th March, 1795, J. Nicholson transferred to

James Cramond, - - - - - 90 "

Left, 16 "

1795, May 14th, J. Nicholson transferred to Omer

Talone, - - - - - shares, 1

And 1796, Jan. 13th, to Wm. Cramond, " 1—2 "

Left, 14 "

Subsequent to this I find no transfer of stock to or from J. Nicholson. Whether these 14 shares were held by John Nicholson for himself, or, as circumstances would lead me to believe, in trust for some one else, I know not. Neither do I know how they were ultimately disposed of, but I presume they were forfeited for the non-payment of assessments made on them. According to the 21st section of the articles of Association, all shares, on which the assessments made on them should be suffered to fall in arrear for a certain specified time, were forfeited. Now the arrearages of assessments due on these 14 shares, which have never been paid,

amounted to \$584 15, exclusive of interest. What confirms me in the belief that these shares were forfeited is, that by the minute book of the Penn. Pop. Co. I see, that it was resolved, on the 11th January, 1797, to forfeit all shares on which the arrearages should not be paid up;—that it was again resolved at a meeting of the stockholders, held 1st Feb. 1797, to direct the Managers forthwith to enforce this 21st section;—that on the next day, both public and private notice of this resolution was given to all delinquent stockholders; and that I find, that, at a meeting of the Managers, held the 13th December, 1797, application was made on behalf of James Cramond, to have the forfeiture of the shares held by him taken off, on his paying up all arrearages, with interest, which request was acceded to by the Board.

But whether these 14 shares of stock were forfeited, or remained the property of John Nicholson, it is clear, that no judgment obtained by the State against him, could become a lien on the lands of the Company on account of his being a stockholder. As this important point has been much misunderstood, and as it appears to me that great pains have been taken to mislead the public in regard to it, I shall endeavor to set it in its true light.

The title to no part of the Company's land was ever vested in John Nicholson. It remained in the Commonwealth till the year 1799, and was then vested, by Patents, in John Field, William Cramond and James Gibson, in trust for the members of the Company. John Nicholson's connexion with these lands was that of a simple stockholder, in a Joint-stock Company for whose benefit these lands were thus held in trust. Now what were the rights of John Nicholson as a stockholder? for it is clear that the Commonwealth, as judgment creditor, could have no greater right over these lands than what Nicholson had. Did Nicholson's shares vest in him a legal title to one acre of land? Certainly not.—They merely entitled him to a pro rata share of the ultimate proceeds of the sale of these lands. Again, were these shares real estate? No lawyer will contend that they were, though the Commissioners appear to treat them as such. This stock, like other stocks of this kind, was evidently personal property, and was always treated and transferred as such while the Company existed. But by the laws on the subject, the lien of the Commonwealth only attached to *real Estate*, and hence did not attach to this stock.—The confusion of ideas in regard to this matter has arisen, from persons not distinguishing between the situation of a stockholder in this Joint-stock Company, and that of a man, who, together with two or more others, should purchase a tract of land in common, and take the conveyance of it; and yet their tenure is essentially different. The latter, as a tenant in common, has the title

to the land vested in himself, and his interest in it is a *freehold*—The title to the land of the Joint-stock Company is vested in Trustees, and not in the stockholders; and the interest of the stockholder is, not a *freehold*, but a mere *chattel interest*. It is precisely similar to that of a stockholder in other Joint-stock Companies, say, for instance, one of our Banks. These Banks have nearly all some real estate connected with their Banking house. Most of them too, to secure a debt, have frequently to take some real estate in payment. In both cases this real Estate is the Joint property of the stockholders. And yet, no one will contend, that a judgment obtained against one of the stockholders in such Bank, would be a lien on such real Estate; or that such judgment creditor could levy on it and sell it, under his judgment against one of the stockholders.

If the Commonwealth, or any other of the creditors of John Nicholson, had wished to look to his interest in the Pennsylvania Population Company as a means of indemnification, the remedy was very simple. It was, to levy on his stock in the Company, and sell it. This simple remedy was too obvious to escape attention; and if it was not resorted to, the reason must have been, because it was found, on investigation, that nothing was to be obtained by this process. I have already stated, that I have reason to think that these 14 shares were forfeited. But suppose they had not been, still they would have been unavailing. As I have stated before, there appears to have been due on these 14 shares, for arrearages of assessment, the sum of \$584.15, and this sum, with interest, was full as much, as these shares could be expected ever to realize. But this was not the only drawback to which these shares were liable. John Nicholson had agreed to pay for 200 shares of stock in donation land. He received the stock and disposed of it, all but 14 shares, but he never delivered the 200 tracts of donation land which he was to give in return. In an interesting report, made by Mr. Nicholson to the Managers, dated 28th January, 1795, he says: "The patents for part of the donation land of the Company are ready; the remainder will be shortly completed." Now of these donation lands the Company never received one acre.—It is true, in 1797, Nicholson made a conveyance to the Company of what were intended to be donation lands, but those who have examined the deed of conveyance, which is recorded in Allegheny county, tell me, that it is a conveyance of mere soldier's certificates, giving no title to any land. What donation lands Mr. Nicholson had had, he had previously parted with to others, principally, I believe, to John Ashley. The account then, between John Nicholson and the Company, if stated, would be this: That John Nicholson had a claim on the Company for the ultimate proceeds

of 14 shares, originally equal to 2800 acres; and that the Company had a claim on John Nicholson for 200 shares of stock, (equal to 40,000 acres of land,) originally issued to him on his engagement to pay therefore in donation land, which he never did. (a.) Under those circumstances it is not surprising, that none of the creditors of John Nicholson ever resorted to his stock in the Company, for payment.

I have thus endeavored to shew, that the Commonwealth's lien never attached to the lands of the Company. But let us suppose, for argument sake, that I am mistaken in this, and that the Commonwealth really had a lien on those lands to the extent of Nicholson's interest in them; still then the Commonwealth must have relinquished this lien, when, in 1799, she confirmed those lands by patents, to John Field, William Cramond and James Gibson, in trust for the stockholders of the Company. No point of law is better settled than that, if one party conveys a tract of land to another party by an absolute deed of conveyance, the grantor parts, by such conveyance, with all the interest he has in the land. It would be monstrous, if such grantor could set up some previous latent lien to defeat his own absolute grant.

But let us suppose for a moment, that in this too I am mistaken, still, in that case, any claim to these lands which the Commonwealth may have had, has, according to the plainest principles of equity, become *lapsed*. If I have a *latent* claim on a piece of property, and stand by when it is sold, and when the new owner lays out his labor and money in improving it, without giving him notice of my claim, I shall not afterwards be permitted to set it up to the injury of the innocent owner. Now the Commonwealth's lien against Nicholson is of forty-six or forty-seven years standing, and during all that time no notice has been given that the Commonwealth considered these lands to be subject to that lien.—On the contrary, so far as negative testimony can go, they were declared not to be subject to it. Other lands were reported by the Commissioners as subject to the lien, but these never were. In 1806 a law was passed, directing, that where it was found that Nicholson had land which he held in partnership with others, the Commissioners should sue out a writ of partition, and cause Nicholson's share to be laid off by itself, so that it might be thus sold. The

(a.) Besides the \$584 15 charged to John Nicholson as arrearages of assessments, he stands charged on the books of the Company, with a balance of \$8000.—As the account books of the Company are in Philadelphia, I cannot refer to them; but I believe that these \$8000 were charged as the price of the 200 shares of stock issued to him, but for which he did not pay.

Commissioners however did not so with the lands of the Pennsylvania Population Company, which implies an admission on their part, that they did not deem these lands to be subject to that lien.— Since then these lands have been repeatedly sold both at public and at private sale. They have been highly improved by the present owners, or by those who owned them previously; and it would surely be the height of injustice, if the State, after thus lulling the purchaser into security in regard to its claim, should now endeavor to enforce it to the prejudice of the present innocent owners of these lands.

Having thus shewn, that the claim set up by the Commissioners is totally unfounded both in fact and in law, let us now carry on the history of the lands in question to the present time, and shew on whom it is now attempted to bring this claim to bear.

It has been already stated, how the Company applied to the Land office, and paid for and took out 1140 warrants. These were immediately lodged with the Deputy Surveyors of the respective districts, but, owing to sundry causes, only 1031 warrants were located, leaving 109 warrants unlocated. Of these unlocated warrants, a portion were afterwards sold to other persons, and located on other lands, but to what extent I am unable to say.— A considerable portion of them remains unlocated to this day, because no land can be found on which to lay them; and thus the State has received from the Company pay for an amount of land never delivered, much larger than what was represented by the 14 shares standing in Nicholson's name at the date of the State lien.

Shortly after the formation of the Company, several agents were appointed to superintend the sale and settlement of these lands in the several districts in which they had been located. The terms on which these lands were offered were liberal. 100 acres were given as a gratuity, to every family who should settle on one of the Company's tracts, continue its residence for 5 years, and make an improvement of 8 acres. Those who wished to obtain a greater quantity of land than 100 acres, could have an additional 100 acres at one dollar per acre, on liberal terms of payment. In addition to these inducements, the Company made advances of provisions and farming utensils to such of the settlers as stood in need of them; and large sums were expended in clearing land, opening roads, building mills, and in other operations to promote the settlement and prosperity of the country. In these efforts the Company persevered during a term of 20 years, that is from 1792 to 1812, when the Stockholders, finding the concern to be unprofitable, resolved to wind it up by a sale of its remaining assets, and to dissolve the Company.

As a preliminary step towards this, the trusteeship of the Com-

pany's lands was transferred from John Field, William Cramond, and James Gibson (in whom, as I have stated before, the title had been vested in 1799 in trust,) to Robert Bowne, of New York. The property was next divided into suitable allotments, consisting generally of about 14 or 15 tracts of land each, and including the existing contracts as well as the unsold land belonging to such allotment. Lists were prepared, specifying, in the greatest detail, the situation of each land contract, the payments made on it, and the amount of principal and of interest remaining unpaid; and also the quantity of land remaining unsold on each tract; and these lists were exhibited for public inspection. Notice of the intended sale was published in the Philadelphia papers, and in those of the counties in which the lands were situated; and on the 29th and 30th of June, 1812, the whole concern was publicly sold at the Coffee-house, in Philadelphia, by allotments, and brought the aggregate sum of \$70,739.

On passing into the hands of individual proprietors, new and strenuous exertions were made for the sale and settlement of these lands, and these have gradually proved to be highly successful.— With a few trifling exceptions, these lands have all been re-sold to actual settlers, and the number of persons now residing on them probably exceeds thirty thousand. Within the last twenty years the population of the counties of Crawford, and Erie, has increased about fourfold, and the improvements of the country have increased in a still greater ratio. This western section of the Commonwealth had, in a peculiar manner, attracted the attention of emigrants from the neighboring States, and from Europe. The most perfect confidence was placed in the validity of our land titles; and we had the pleasing prospect of seeing this country, in a very few years, one of the best settled and wealthiest parts of Pennsylvania.

But these pleasing anticipations of the future, have suddenly been destroyed, and destroyed for years, by the late proceedings of the Nicholson Commissioners. Without the shadow of a legal right, as I have shewn before;—without any trial;—without any previous notice, upwards up fifteen hundred tracts of land,—the home of at least 40,000 persons,—are advertised to be sold, on a few days notice, under pretence of some latent lien of half a century's standing, unless the present claimants of those lands should travel to Pittsburgh, a distance to most of them of 100 to 150 miles, and there submit to such terms of compromise as the Nicholson Commissioners, in their mercy, might deem proper to impose. This act has at once put a stop to all emigration to this part of the State, and well might it produce this effect; for what person in his senses, would come to settle in Pennsylvania if he finds

that a Patent from the Commonwealth, and a quiet undisturbed possession under it of nearly half a century, can afford him no security against having his property swept away under pretence of some latent State lien anterior to the date of the Patent.

I would speak of the acts of public officers with the respect due to their station; but I feel myself justified in saying, that, during the course of a long life, I have never met with an act so regardless of the first principles of Justice, and of the rights of individuals, as this late act of the Commissioners. For nearly forty years a special Board of Commissioners has existed, charged with the duty of finding out, and selling, the property of John Nicholson, and none of these have ever pretended, that any of the lands recently advertised, were subject to the State lien. In 1806, and for several years afterwards, Cadwallader Evans, and John Lyon, together with a third associate, acted as Commissioners. The land transactions of Nicholson were then comparatively recent, and no one was better calculated to trace them up than the members of that Board; and yet, these never pretended that the lands of the Penn'a. Population Company were liable to the State lien. And it was not because these lands had escaped their notice. Mr. Primrose, in a letter recently addressed through the public papers to James Gibson, Esq., tells us, that he finds among the records of the Board, a report made by some one in 1805, in which Nicholson's interest in the Penn'a. Population Co. is expressly referred to. If after having thus their attention turned to these lands, Messrs. Evans and Lyon did not report them, it must have been because, on investigation, they found that those lands were not subject to the lien. (b)

In 1825, William Powers was appointed a Commissioner. Mr. Powers had been formerly Deputy Surveyor, and was intimately acquainted with Nicholson's land operations in this section of country. He was to receive the one fourth of all the lands he could discover; and yet, notwithstanding this inducement, he never returned these lands, well knowing them not to be subject to the lien.

More recently, Mr. Anthony, (the present Judge of the Nicholson Court,) acted as a Commissioner; and not only did he, in that capacity, not return these lands as being subject to the lien, but he told Messrs. Church, and Farrelly, two gentlemen of this place,

(b.) Mr. Primrose does not tell us how it happened, that, after so carefully examining the old records of the Board, the present Board should advertise eighty tracts of Donation land, late the property of John Ashley, though Messrs. Evans and Lyon had officially certified that these tracts were not subject to the lien.

that there were no lands in this section of Pennsylvania, which were affected by the Nicholson lien. And finally Mr. Creigh, so late as last summer, assured Mr. Powers, of this place, that the people in this part of the State were not affected by the lien.

The Commissioners do not pretend, that, subsequent to that time, they have received any new light in regard to these lands. But suppose that such had been the case, what would then have been their duty? In the first place, before they set up this claim, they ought at least to have ascertained whether it was well founded.— This they had every opportunity of doing. They were frequently in Philadelphia. There resides Mr. Gibson, one of the former Trustees, and for several years President of the Company, from whom every needful information could have been obtained; but he was never called on.

In the second place, it was the duty of the Commissioners, expressly made so by law, in case they discovered land which they supposed to be subject to the State lien, that they should call, in the first instance, on the persons now claiming those lands, and try to effect a compromise with them, and it was only *after* such attempt at making a compromise should have failed, that they were authorized to report such tract of land to the court; and it was only *then* that the court was authorized to decree the sale of such land. Now this wholesome provision of the law, inserted expressly for the protection of the citizens, has been totally disregarded by the Commissioners. How, and on what evidence, the decree of sale was obtained, I know not. Mr. Watts, who searched the records of the court, says that these gave him no insight on this interesting point.

Having however somehow obtained a decree, the Commissioners next proceed to advertise the lands in question, to be sold at Pittsburgh on the 24th October, unless the present claimants of them should call on the Commissioners at Pittsburgh, between the 11th and 24th of October, and save their lands from being sold by making a compromise with the Commissioners. On this part of their proceeding I beg leave to make two remarks. The first is, that it entirely reverses the order prescribed by law. According to the law, the Commissioners were to call on the claimants. Here the claimants are obliged to call on the Commissioners. Again, by the law the attempt to compromise *must precede* the decree of sale. Here however the decree of sale is made to precede the attempt to compromise. My second remark is, that these proceedings were in the highest degree oppressive. At least eight thousand heads of families are compelled, under the penalty of having their land sold, to travel to Pittsburg, a distance to most of them of from 100 to 150 miles, and to appear there by a given day before

the Commissioners, and to submit to such terms as the Commissioners might impose. To those acquainted with the situation of this country it is unnecessary to observe, that, to a large portion of the persons interested, such a journey to Pittsburgh was totally impossible.

It is deserving of special notice, that the Commissioners do not call on the persons interested to produce proof that their lands are not subject to the lien. That *trifling* question the Commissioners appear to have decided without a hearing; and they present to us nothing but the naked alternative, either of commuting, or of having our lands sold. But suppose the Commissioners had declared their readiness to receive proofs that these lands were not subject to the State lien, still this would hardly have rendered their proceedings less oppressive. Of the thousands whose property was at stake, very few had ever heard of the early connexion of John Nicholson with the Pennsylvania Population Company, and they would therefore not know where to look for the necessary proofs; and even if they had been told, that they must look for their proofs among the records of the Pennsylvania Population Company, and the recollection of the few surviving Managers, still the distance to Philadelphia was too great, and the expense of making the necessary research there too heavy, to have enabled any but a very few, to produce the necessary proofs in the short space of time allowed by the Commissioners.

Under this mockery of legal proceedings, the property of forty-thousand citizens would have been sacrificed, had not the Supreme court of the State interfered. To Mr. Church, who entered an appeal from the decree of the Nicholson court for all the lands situated west of the Allegheny river; and to Mr. Watts, who obtained the supersedeas, by which all further proceedings are stayed until after a hearing in the Supreme court in May next, the lasting gratitude of the community is due.

I understand that it has been observed in regard to these proceedings of the Commissioners, that, in case the lands in question are not subject to the lien, the owners of them cannot be injured, as, in that case, a sale of them would vest no title in the purchaser. Now this apology is equally heartless and false. That the purchaser at the Commissioner's sale would acquire no title is readily admitted; but would that have prevented the present owner of those lands from being injured? Would it have been no injury to him, to have a doubt cast on his title, by having an adverse title vested in another, under the authority of the Commonwealth? Would it have been no injury to him, to be dragged to a distance of three hundred miles from his home, to defend his title before the Nicholson court at Harrisburg, and to have to hunt for the

means of his defence in Philadelphia and elsewhere, among the scattered records of a Company dissolved since more than thirty years, or the papers of individuals long since dead? It is clear, that the necessity of thus defending their rights, would have entailed ruin on one half of the present owners of these lands.

Having thus shewn the illegality of the proceedings of the Nicholson Commissioners, and their injurious effects, it remains only to point out a remedy for these evils. This remedy is very simple. It is, that the legislature, at their next session, abolish the Nicholson Court;—cause satisfaction to be entered on the State lien; and make such an acknowledgment of the titles of the lands advertised, as may serve to remove the doubt cast on them by the Commissioners. To this it appears to me there can be no *rational* objection; and to shew that there is not, I shall consider these points separately.

The Nicholson Court was established for the ostensible purpose of obtaining for the State payment of the balance due from John Nicholson. But as a fiscal agent this Court has proved to be worse than useless. According to the reports made to the legislature by the State Treasurer, this Court has brought into the State Treasury not one cent, while, at the same time, it has been a charge on the Treasury to the amount of several thousand dollars. But this is the least evil this Court has inflicted on the community. By the proceedings of the Commissioners, thousands of our citizens have been disquieted in the peaceable possession of their hard earned property, and the peace of the community has been seriously jeopardized; for it could not be expected, that forty thousand persons would suffer themselves *unresistingly* to be thus uncere- moniously stript of their all. A Court which either has, or arrogates to itself, the power of thus disposing of property to an immense amount without notice and without trial, is incompatible with the safety of the community.

In regard to entering satisfaction on the lien, the State sacrifices nothing in doing so, and secures thereby its citizens from future vexations. An experience of thirty years has proved conclusively, that the recovery of the balance remaining due from Nicholson is hopeless. The bona fide property of John Nicholson has long since been exhausted; and every attempt made to find such property subsequent to the agency of Cadwallader Evans and his associates, has only served to disquiet innocent persons, and has resulted in disappointment. It is true, that if we are to believe the *vague assertions* of the present Commissioners, there is now an immense amount of property belonging to John Nicholson scattered over every part of the State; but if this be so, how does it happen that, with all this property at their disposal, the Commis-

sioners do constantly seize on property to which John Nicholson had no right? and that their operations do not bring one cent into the State Treasury?

But neither is the balance remaining due from Nicholson any thing like as great as some persons, to answer their own purposes, represent it to be. On the 18th December, 1795, the Commonwealth obtained a Judgment against John Nicholson for \$11,222 50. In March, 1796, a balance was struck against him of \$58,429 24, afterwards reduced by credits to \$51,209 22. Another balance was struck against him, in December, 1796, of \$63,729 86. Nicholson being dissatisfied with the settlements of March and December, 1796, a trial was had between the Commonwealth and him, in the Supreme Court, where, in March, 1797, a Judgment was rendered against him for \$110,390 89. (c.)

The true amount due from John Nicholson is the aggregate of the two Judgments obtained against him in December, 1795, and March, 1797, amounting together to the sum of \$121,613 39.—On account of this debt the State has received, at sundry times, according to the report of Mr. Mann, State Treasurer, see Journals of the Senate for 1842, - - - \$126,280 80.

And, according to the report made by Mr. Creigh,

Commissioner, there is due on bonds taken for	
lands sold in 1807 and 1808, - - -	19,126 19

And, according to the same report, there is in the	
hands of Attornies, collected, but not paid over,	6,858 84

Making together,	\$152,265 83
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If from this sum we deduct the legal expenses incurred in collecting this money, amounting, as per

Mr. J. B. Anthony's report of November, 1839, to	4,547 48
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There will remain the sum of	\$147,718 35
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Which the State has either received or secured on account of this debt; that is. a sum equal to the whole of the principal of the debt, and about \$26,000 on account of the interest. It does not often happen, that so large a share of a defalcation is recovered from a public defaulter.

With respect to the acknowledgment of the validity of our titles, this is a mere act of Justice, which is due to us. The Com-

(c.) It is not very plain to a common understanding, how land can now be sold to satisfy the Judgment of \$11,222 50, of the year 1795, when a sum ten times greater has subsequently been received by the State, from the property of John Nicholson, in discharge of that, and the subsequent judgment.

monwealth's officers have cast an injurious doubt on our titles, and it is no more than justice, that the Commonwealth should, as far as practicable, repair the injury done to us.

If it be objected to the abolishment of the Nicholson Court, that the doing so would injure the heirs and creditors of Nicholson, the answer to this objection is a very simple one. These heirs and creditors are benefitted by having a preferred creditor removed out of their way; and they have no reason to complain, while the ordinary Courts of Justice are open to them. Before those Courts the people of this country will at all times be ready to meet them; but it is surely not just, that thousands of innocent citizens should be ruined, by being dragged three hundred miles from their homes, to defend themselves against groundless claims.

H. J. HUIDEKOPER.

MEADVILLE, Dec. 1, 1842.